

Case Summary and Issues

Following a guilty plea, Travis Ratliff was convicted of visiting a common nuisance, a Class D misdemeanor, and possession of cocaine, a Class D felony. His eighteen-month sentence was suspended to probation. Ratliff was subsequently found to have violated several conditions of his probation and he was ordered to serve his previously-suspended sentence in full. Ratliff now appeals, raising for our review the following issues: whether there was sufficient evidence to support the revocation of his probation, and whether the trial court properly ordered that he serve his entire suspended sentence. Concluding that there was sufficient evidence to support the revocation of his probation and that the trial court did not abuse its discretion in sentencing him, we affirm.

Facts and Procedural History

Ratliff pled guilty to visiting a common nuisance, a Class B misdemeanor, and possession of cocaine, a Class D felony, and was sentenced to eighteen months, all suspended to probation. Among the conditions of Ratliff's probation with the Madison County Probation Department were that he: 1) report in person to the probation department as directed; 2) undergo mental health and substance abuse evaluation within thirty days at a treatment facility approved by the probation department, fully comply with all treatment recommendations, and submit written proof of compliance with any required therapy or counseling; 3) maintain and verify to the probation department employment of at least thirty-five hours per week; 4) keep the probation department informed of his address; 5) pay probation user's fees; 6) notify the probation department within forty-eight hours of any new arrest; 7) completely abstain from the use of alcohol

and illicit drugs; 8) be at his address between 12 a.m. and 6 a.m. unless for a good reason, such as employment; and 9) obey all municipal, state, and federal laws, and behave well in society.

On July 18, 2007, the probation department filed a notice of violation of probation¹ alleging violations of each of the conditions above. Specifically, the notice alleged that Ratliff failed to timely report to the probation department; failed to comply with substance abuse treatment recommendations; failed to maintain and verify employment; failed to keep the probation department advised of his address; and failed to pay probation user's fees. In addition, it was alleged that Ratliff was arrested on or about July 15, 2007 for possession of cocaine and public intoxication; that he allegedly had been using an alcoholic beverage and was at a place other than his residence at 3:30 a.m. on that date; and that he failed to advise the probation department of his arrest. Following a probation revocation hearing, at which testimony was heard regarding Ratliff's July 15, 2007, arrest, as well as the violations of other conditions of his probation, the trial court ordered that his probation be revoked and he serve all eighteen months of his previously-suspended sentence at the Department of Correction. Ratliff now appeals.

¹ The probation department originally filed a notice of violation of probation on April 23, 2007, and an amended notice of violation of probation on June 27, 2007. The July 18, 2007, notice of violation of probation was the second amended notice of violation, encompassing the allegations of the previous notices and the new allegations stemming from Ratliff's arrest.

Discussion and Decision

I. Probation Violation

A. Standard of Review

A probation revocation hearing is in the nature of a civil proceeding, and alleged violations need be proved only by a preponderance of the evidence. Ind. Code § 35-38-2-3(e); Isaac v. State, 605 N.E.2d 144, 146 (Ind. 1992), cert. denied, 508 U.S. 922 (1993). In considering whether evidence is sufficient to support the revocation of probation, we apply the same standard of review applied to all other sufficiency claims. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), trans. denied. Specifically, we neither reweigh the evidence nor judge the credibility of the witnesses and examine only the evidence most favorable to the trial court's judgment and the reasonable inferences that may be drawn therefrom. Packer v. State, 777 N.E.2d 733, 740 (Ind. Ct. App. 2002). We will affirm if there is substantial evidence of probative value supporting the trial court's judgment. Id.

B. Criminal Conduct

Ratliff contends that the testimony regarding his alleged criminal conduct on July 15, 2007, should have been suppressed as the product of an unlawful search and that without said testimony, there would be insufficient evidence to support a finding that he violated the probation condition that he obey all laws.

Officer Steve Brooks of the Anderson Police Department testified at Ratliff's probation revocation hearing that at approximately 3:30 a.m. on July 15, 2007, officers were called to a bar because of a fight in the parking lot. When he arrived, he saw Ratliff

walking away from the bar through an adjacent vacant lot. Officer Brooks pulled into the alley, turned his spotlight on Ratliff, and told him to stop. Ratliff threw something to the ground with his right hand and then got on his knees with his hands in the air at Officer Brooks's direction. Officer Brooks then approached, handcuffed Ratliff, and discovered two clear plastic baggies containing a white substance later determined to be crack cocaine on the ground near Ratliff. Officer Brooks also smelled alcohol on Ratliff's breath. Ratliff objected to Officer Brooks's testimony, claiming the stop was not supported by reasonable suspicion.

An investigatory stop may be made only if the police officer has a reasonable suspicion grounded in specific facts that further investigation is necessary. Davis v. State, 858 N.E.2d 168, 172 (Ind. Ct. App. 2006). In evaluating the validity of a stop, we consider the totality of the circumstances. Id. In Polk v. State, 739 N.E.2d 666 (Ind. Ct. App. 2000), we considered the necessity for reasonable suspicion in the probation context. Police observed Polk walking in a high-crime area where they had made many crack cocaine arrests. As they passed by, Polk turned away. When approached, Polk appeared nervous and sweaty. Polk identified himself, but refused to consent to a pat down search. When asked why he was refusing, Polk ran away. As he was running, he threw aside an object later determined to be a handgun. When he was apprehended, Polk told the officers that he was on probation. Prior to his admission, the officers did not know Polk was on probation. Polk was found to have violated his probation by being in possession of a handgun. We held that although the State may intrude on a probationer's privacy to a greater degree than a member of the public at large, when a search is not

conducted in the course of probation enforcement, a probationer's normal privacy rights may not be stripped from him. Id. at 669. Because the officers did not stop Polk in connection with his probationary status, did not have reasonable suspicion to stop him – relying only on the facts that he was in a high crime area and turned away as they passed him – and the fruit of that stop was the only evidence of his violation of probation, we reversed the trial court's revocation of his probation.

Here, Ratliff was not stopped in the course of probation enforcement, and the stop must therefore be supported by reasonable suspicion. Due to a number of factors, including the lateness of the hour, the fact that Officer Brooks was responding to a call about a fight outside a bar, and the fact that Ratliff was walking away from the scene of the fight as officers approached, Officer Brooks had reasonable suspicion to stop Ratliff as a possible participant in the fight. See McKnight v. State, 612 N.E.2d 586, 588 (Ind. Ct. App. 1993) (officer had reasonable suspicion to stop defendant's car because of the late hour, the empty streets, the proximity of the car to a fight scene, the speed with which the car was traveling in the vicinity of a fight scene, and the information that some of the participants in the fight had fled in a large vehicle), trans. denied. The trial court did not err in allowing evidence from the stop at the probation revocation hearing, and the evidence was sufficient to show by a preponderance of the evidence that Ratliff possessed cocaine and used alcohol in violation of the conditions of his probation.²

² Ratliff also contends that the State's evidence was insufficient to prove that he violated the "technical" conditions of his probation. As we have determined that there was sufficient evidence to support the trial court's finding that he committed new crimes while on probation, and as Ratliff concedes that a "trial court may revoke a person's probation upon [violation of] any single term of probation," brief of appellant at 15-16, we need not address this argument except as it relates to his sentencing argument.

II. Sentence

A. Standard of Review

Ratliff contends that the trial court's sentence imposed as a result of his probation violations is inappropriate in view of his character and the nature of his offense, urging us to review his sentence under Indiana Appellate Rule 7(B). However, "[a] defendant may not collaterally attack a sentence on appeal from a probation revocation." Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). A Rule 7(B) analysis of Ratliff's sentence would be undertaken only on direct appeal from his conviction. The appropriate standard of review of a trial court's sentencing decision upon a probation revocation is to determine whether the trial court abused its discretion. Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before it. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006).

"Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Id. (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). Indiana Code section 35-38-2-3(g) gives a trial court the following options upon finding a probationer has committed a violation of his probation:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

B. Execution of All of the Previously-Suspended Sentence

Ratliff was originally sentenced to eighteen months for visiting a common nuisance and possessing cocaine, with eighteen months suspended. After revoking Ratliff's probation, the trial court ordered Ratliff to serve eighteen months at the Department of Correction. In sentencing Ratliff, the trial court stated:

Well even if we were talking about simply the technical violations, basically what it amounts to is that Mr. Ratliff has simply chosen not to do probation. That's what it comes down to. . . . All [told] I think the evidence does support the recommended sanction and I will order that the eighteen (18) months suspended back on January the 11th will now be executed to Department of Correction with no return to probation.

Transcript at 33-34. We have already determined that there was sufficient evidence to support the trial court's finding that Ratliff violated his curfew and committed new criminal offenses. There was evidence supporting a finding that Ratliff was not living at the address the probation department had for him and had not advised probation of his new address. Even if we consider only those other "technical" violations that Ratliff does not dispute, he missed two probation appointments in violation of the condition that he report to probation as directed, and failed to verify his employment to the probation department. The imposition of the previously suspended sentence was merely a consequence of Ratliff's violation of the terms of his initial sentence, which included supervised probation. Under the circumstances presented here, we cannot say that the

trial court abused its discretion in ordering that Ratliff serve his entire eighteen-month sentence.

Conclusion

There was sufficient evidence to support the revocation of Ratliff's probation and the trial court did not abuse its discretion in ordering him to serve his entire previously-suspended sentence. The judgment of the trial court is affirmed.

Affirmed.

BAKER, C.J., and RILEY, J., concur.